

**78.5540 Retired member who returns to work with participating employer --
Combination of accounts -- Employment within 12 months of retirement date -
- Independent contractors and leased employees -- Reemployment on or after
September 1, 2008 -- Voided retirement -- Absence of prearranged agreement -
- Volunteer services -- Mayors and members of city legislative bodies --
Administrative regulations.**

- (1) A retired member whose disability retirement was discontinued pursuant to KRS 78.5528 and who is reemployed by an employer participating in the system or the Kentucky Retirement Systems prior to his or her normal retirement date shall have his or her accounts combined upon termination for determining eligibility for benefits. If the member is eligible for retirement, the member's service and creditable compensation earned as a result of his or her reemployment shall be used in the calculation of benefits, except that the member's final compensation shall not be less than the final compensation last used in determining his or her retirement allowance. The member shall not change beneficiary or payment option designations.
- (2)
 - (a) If a retired member accepts employment or begins serving as a volunteer with an employer participating in the systems administered by Kentucky Retirement Systems or the County Employees Retirement System within twelve (12) months of his or her retirement date, the retired member shall notify the Authority and the participating employer shall submit the information required or requested by the Authority to confirm the individual's employment or volunteer status. The retired member shall not be required to notify the Authority regarding any employment or volunteer service with a participating agency that is accepted after twelve (12) months following his or her retirement date.
 - (b) If the retired member is under a contract to provide services as an independent contractor or leased employee to an employer participating in the systems administered by Kentucky Retirement Systems or the County Employees Retirement System within twelve (12) months of his or her retirement date, the member shall submit a copy of that contract to the Authority, and the Authority shall determine if the member is an independent contractor or leased employee for purposes of retirement benefits. The retired member and the participating employer shall submit the information required or requested by the Authority to confirm the individual's status as an independent contractor or leased employee. The retired member shall not be required to notify the Authority regarding any services entered into as an independent contractor or leased employee with a participating agency that the employee enters into after twelve (12) months following his or her retirement date.
- (3) Retired members of the County Employees Retirement System who returned to work with an employer that participates in the County Employees Retirement System or Kentucky Retirement Systems prior to September 1, 2008, shall be governed by the provisions of KRS 61.637(1) to (16).
- (4) The following shall apply to retired members of the County Employees Retirement

System who are reemployed on or after September 1, 2008, by an agency participating in the systems administered by the County Employees Retirement System or the Kentucky Retirement Systems:

- (a) Except as provided by paragraphs (c) and (d) of this subsection, if a retired member is receiving a retirement allowance from the County Employees Retirement System, or has filed the forms required to receive a retirement allowance from the County Employees Retirement System, and is employed in a regular full-time position required to participate in the County Employees Retirement System or the Kentucky Retirement Systems or is employed in a position that is not considered regular full-time with an employer participating in the County Employees Retirement System or the Kentucky Retirement Systems within three (3) months following the member's initial retirement date, the member's retirement shall be voided, and the member shall repay to the system all benefits received, including any health insurance benefits. If the retired member is returning to work in a regular full-time position required to participate in the County Employees Retirement System:

- 1. The member shall contribute to a member account established for him or her in the County Employees Retirement System or the Kentucky Retirement Systems, and employer contributions shall be paid on behalf of the member by the participating employer to the system; and
- 2. Upon subsequent retirement, the member shall be eligible for a retirement allowance based upon total service and creditable compensation, including any additional service or creditable compensation earned after his or her initial retirement was voided;

- (b) Except as provided by paragraphs (c) and (d) of this subsection, if a retired member is receiving a retirement allowance from the County Employees Retirement System and is employed in a regular full-time position required to participate in the County Employees Retirement System or the Kentucky Retirement Systems after a three (3) month period following the member's initial retirement date, the member may continue to receive his or her retirement allowance during the period of reemployment subject to the following provisions:

- 1. If a member is reemployed by a participating employer within twelve (12) months of the member's retirement date, the participating employer shall certify in writing on a form prescribed by the Authority that no prearranged agreement existed between the employee and employer prior to the employee's retirement for the employee to return to work with the participating employer. If the participating employer fails to complete the certification or the Authority determines a prearranged agreement exists, the member's retirement shall be voided and the provisions of paragraph (a) of this subsection shall apply to the member and the employer. For purposes of this paragraph:
 - a. If an elected official is reelected to a new term of office in the same position as the elected official held prior to retirement and

takes office within twelve (12) months of his or her retirement date, he or she shall be deemed by the Authority as having a prearranged agreement; and

- b. Employment that is accepted by the retired member after twelve (12) months following the member's retirement date shall not constitute a prearranged agreement under this paragraph;
 2. Notwithstanding any other provision of KRS Chapter 78 to the contrary, the member shall not contribute to the system and shall not earn any additional benefits for any work performed during the period of reemployment;
 3. Except as provided by KRS 70.291 to 70.293, 95.022, and 164.952 and except for any retiree employed as a school resource officer as defined by KRS 158.441, the employer shall pay employer contributions as specified by KRS 78.5536 and 78.635 on all creditable compensation earned by the employee during the period of reemployment. The additional contributions paid shall be used to reduce the unfunded actuarial liability of the system; and
 4. Except as provided by KRS 70.291 to 70.293, 95.022, and 164.952 and except for any retiree employed as a school resource officer as defined by KRS 158.441, the employer shall be required to reimburse the system for the cost of the health insurance premium paid by the system to provide coverage for the retiree, not to exceed the cost of the single premium. Effective July 1, 2015, local school boards shall not be required to pay the reimbursement required by this subparagraph for retirees employed by the board for eighty (80) days or less during the fiscal year;
- (c) If a member is receiving a retirement allowance from hazardous position coverage with the County Employees Retirement System, or has filed the forms required to receive a retirement allowance from the County Employees Retirement System for service in a hazardous position, and is employed in a regular full-time hazardous position required to participate in the County Employees Retirement System or the Kentucky Retirement Systems within one (1) month following the member's initial retirement date, the member's retirement shall be voided, and the member shall repay to the system all benefits received, including any health insurance benefits. If the member is returning to work in a regular full-time position required to participate in the County Employees Retirement System or the Kentucky Retirement Systems:
1. The member shall contribute to a member account established for him or her in the County Employees Retirement System or the Kentucky Retirement Systems, and employer contributions shall be paid on behalf of the member by the participating employer; and
 2. Upon subsequent retirement, the member shall be eligible for a retirement allowance based upon total service and creditable compensation, including any additional service or creditable

compensation earned after his or her initial retirement was voided;

- (d) If a member is receiving a retirement allowance from the hazardous position coverage with the County Employees Retirement System and is employed in a regular full-time hazardous position required to participate in the County Employees Retirement System or the Kentucky Retirement Systems after a one (1) month period following the member's initial retirement date, the member may continue to receive his or her retirement allowance during the period of reemployment subject to the following provisions:
 - 1. If a member is reemployed by a participating employer within twelve (12) months of the member's retirement date, the participating employer shall certify in writing on a form prescribed by the Authority that no prearranged agreement existed between the employee and employer prior to the employee's retirement for the employee to return to work with the participating employer. If the participating employer fails to complete the certification or the Authority determines a prearranged agreement exists, the member's retirement shall be voided and the provisions of paragraph (c) of this subsection shall apply to the member and the employer. For purposes of this paragraph:
 - a. If an elected official is reelected to a new term of office in the same position as the elected official held prior to retirement and takes office within twelve (12) months of his or her retirement date, he or she shall be deemed by the Authority as having a prearranged agreement; and
 - b. Employment that is accepted by the retired member after twelve (12) months following the member's retirement date shall not constitute a prearranged agreement under this paragraph;
 - 2. Notwithstanding any other provision of KRS Chapter 78 to the contrary, the member shall not contribute to the system or the Kentucky Retirement Systems and shall not earn any additional benefits for any work performed during the period of reemployment;
 - 3. Except as provided by KRS 70.291 to 70.293, 95.022, and 164.952 and except for any retiree employed as a school resource officer as defined by KRS 158.441, the employer shall pay employer contributions as specified by KRS 78.5536 and 78.635 on all creditable compensation earned by the employee during the period of reemployment. The additional contributions paid shall be used to reduce the unfunded actuarial liability of the system; and
 - 4. Except as provided by KRS 70.291 to 70.293, 95.022, and 164.952 and except for any retiree employed as a school resource officer as defined by KRS 158.441, the employer shall be required to reimburse the system for the cost of the health insurance premium paid by the system to provide coverage for the retiree, not to exceed the cost of the single premium;
- (e) Notwithstanding paragraphs (a) to (d) of this subsection, a retired member

who qualifies as a volunteer for an employer participating in the County Employees Retirement System or the Kentucky Retirement Systems and who is receiving reimbursement of actual expenses, a nominal fee for his or her volunteer services, or both, shall not be considered an employee of the participating employer and shall not be subject to paragraphs (a) to (d) of this subsection if:

1. Prior to the retired member's most recent retirement date, he or she did not receive creditable compensation from the participating employer in which the retired member is performing volunteer services;
2. Any reimbursement or nominal fee received prior to the retired member's most recent retirement date has not been credited as creditable compensation to the member's account or utilized in the calculation of the retired member's benefits;
3. The retired member has not purchased or received service credit under any of the provisions of KRS 78.510 to 78.852 for service with the participating employer for which the retired member is performing volunteer services; and
4. Other than the status of volunteer, the retired member does not become an employee, leased employee, or independent contractor of the employer for which he or she is performing volunteer services for a period of at least twelve (12) months following the retired member's most recent retirement date.

If a retired member, who provided volunteer services with a participating employer under this paragraph violates any provision of this paragraph, then he or she shall be deemed an employee of the participating employer as of the date he or she began providing volunteer services and both the retired member and the participating employer shall be subject to paragraphs (a) to (d) of this subsection for the period of volunteer service;

- (f) Notwithstanding any provision of this section, any mayor or member of a city legislative body shall not be required to resign from his or her position as mayor or as a member of the city legislative body in order to begin drawing benefits from the systems administered by the Kentucky Retirement Systems or the County Employees Retirement System or subject to any provision of this section as it relates solely to his or her service as a mayor or member of the city legislative body, if the mayor or member of a city legislative body:
1. Has not participated in the County Employees Retirement System prior to retirement, but is otherwise eligible to retire from the Kentucky Employees Retirement System or the State Police Retirement System; or
 2. Has been or is participating in the County Employees Retirement System and is at least sixty-two (62) years of age. If a mayor or member of a city legislative body who is at least sixty-two (62) years of age retires from the systems administered by Kentucky Retirement Systems or the County Employees Retirement System but remains in office after his or her effective retirement date, the mayor or member of the city legislative

body shall not accrue any further service credit or benefits in the systems administered by Kentucky Retirement Systems or the County Employees Retirement System for any employment occurring on or after the effective retirement date;

- (g) Notwithstanding any provision of this section, any current or future part-time adjunct instructor for the Kentucky Fire Commission who has not participated in the Kentucky Employees Retirement System prior to retirement, but who is otherwise eligible to retire from the County Employees Retirement System, shall not be:
 - 1. Required to resign from his or her position as a part-time adjunct instructor for the Kentucky Fire Commission in order to begin drawing benefits from the County Employees Retirement System; or
 - 2. Subject to any provision of this section as it relates solely to his or her service as a part-time adjunct instructor for the Kentucky Fire Commission;
- (h) If a member is receiving a retirement allowance from the County Employees Retirement System and enters into a contract or becomes a leased employee of an employer under contract with an employer participating in the County Employees Retirement System or the Kentucky Retirement Systems:
 - 1. At any time following retirement, if the Authority determines the employment arrangement does qualify as an independent contractor or leased employee, the member may continue to receive his or her retirement allowance during the period of the contract;
 - 2. Within three (3) months following the member's initial retirement date, if the Authority determines the employment arrangement does not qualify as an independent contractor or leased employee, the member's retirement shall be voided in accordance with paragraph (a) of this subsection;
 - 3. After three (3) months but within twelve (12) months following the member's initial retirement, if the Authority determines the employment arrangement does not qualify as an independent contractor or leased employee and that a prearranged agreement existed between the member and the agency for the member to return to work with the agency, the member's retirement shall be voided in accordance with paragraph (a) of this subsection; and
 - 4. After a twelve (12) month period following the member's initial retirement, the member may continue to receive his or her retirement allowance during the period of the contract and the member shall not be required to notify the Authority or submit any documentation for purposes of this section to the Authority. The initiation of a contract or the initial date of the leased employment of a retired member by a participating agency that occurs after twelve (12) months or more following the retired member's retirement date shall not constitute a prearranged agreement under this subsection;

- (i) The Authority shall issue a final determination regarding a certification of the absence of a prearranged agreement or the retired member's qualification as an independent contractor or leased employee as required under this section no later than thirty (30) days after the retired member and participating employer provide all required forms and additional information required by the Authority; and
 - (j) Retired members of one (1) of the systems administered by Kentucky Retirement Systems who are reemployed by an employer in the County Employees Retirement System on or after September 1, 2008, shall not be eligible to earn a second retirement account in the County Employees Retirement System for his or her service to the employer.
- (5) The Authority shall promulgate administrative regulations to implement the requirements of this section, including incorporating by reference Authority-prescribed forms that a retired member and participating agency shall provide the systems under subsections (1) and (4) of this section.
- (6) "Reemployment" or "reinstatement" as used in this section shall not include a retired member who has been ordered reinstated by the Personnel Board under authority of KRS 18A.095. A retired member who has been ordered reinstated by the Personnel Board under authority of KRS 18A.095 or by court order or by order of the Human Rights Commission and accepts employment by an agency participating in the Kentucky Employees Retirement System or County Employees Retirement System shall void his or her retirement by reimbursing the system in the full amount of his or her retirement allowance payments received.

Effective: July 14, 2022

History: Amended 2022 Ky. Acts ch. 56, sec. 2, effective July 14, 2022; and ch. 216, sec. 24, effective April 14, 2022. -- Created 2021 Ky. Acts ch. 102, sec. 16, effective April 1, 2021.

Legislative Research Commission Note (7/14/2022). This statute was amended by 2022 Ky. Acts chs. 56 and 216, which do not appear to be in conflict and have been codified together.